

1 C. to make and alter bylaws for its organization
2 and internal management;

3 D. to appoint other officers, agents and employees,
4 prescribe their duties and qualifications and fix their
5 compensation;

6 E. to acquire, hold, improve, mortgage, lease and
7 dispose of real and personal property for its public purposes;

8 F. subject to the provisions of Section 58-18-6
9 NMSA 1978, to make loans, and contract to make loans, to
10 mortgage lenders;

11 G. subject to the provisions of Section 58-18-7
12 NMSA 1978, to purchase, and contract to purchase, mortgage
13 loans from mortgage lenders;

14 H. to procure or require the procurement of a
15 policy of group or individual life insurance or disability
16 insurance or both to insure repayment of mortgage loans in
17 event of the death or disability of the borrower and to pay any
18 premiums [~~therefor~~] for the policy;

19 I. to procure insurance against any loss in
20 connection with its operations, including without limitation
21 the repayment of any mortgage loan, in [~~such~~] amounts and from
22 [~~such~~] insurers, including the federal government, [~~as it may~~
23 ~~deem~~] that the authority deems necessary or desirable; to
24 procure liability insurance covering its members, officers and
25 employees for acts performed within the scope of their

1 authority as members, officers or employees; and to pay any
 2 premiums [~~therefor~~] for insurance procured;

3 J. subject to any agreement with bondholders or
 4 noteholders:

5 (1) to renegotiate any mortgage loan or any
 6 loan to a mortgage lender in default;

7 (2) to waive any default or consent to the
 8 modification of the terms of any mortgage loan or any loan to a
 9 mortgage lender and otherwise exercise all powers with respect
 10 to its mortgage loans and loans to mortgage lenders that any
 11 private creditor may exercise under applicable law; and

12 (3) to commence, prosecute and enforce a
 13 judgment in any action or proceeding, including without
 14 limitation a foreclosure proceeding, to protect or enforce any
 15 right conferred upon it by law, mortgage loan agreement,
 16 contract or other agreement; and in connection with any such
 17 proceeding, to bid for and purchase the property or acquire or
 18 take possession of it and, in such event, complete, administer,
 19 pay the principal of and interest on any obligations incurred
 20 in connection with the property and operate or dispose of and
 21 otherwise deal with the property in such manner as the
 22 authority may deem advisable to protect its interests therein;

23 K. to make and execute contracts for the
 24 administration, servicing or collection of any mortgage loan
 25 and pay the reasonable value of services rendered to the

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underscored material = new
 [bracketed material] = delete

1 authority pursuant to such contracts;

2 L. to fix, revise from time to time, charge and
3 collect fees and other charges in connection with the making of
4 mortgage loans, the purchasing of mortgage loans and any other
5 services rendered by the authority;

6 M subject to any agreement with bondholders or
7 noteholders, to sell any mortgage loans at public or private
8 sale at such prices and on such terms as the authority shall
9 determine;

10 N. to borrow money and to issue bonds and notes
11 that may be negotiable and to provide for the rights of the
12 holders thereof;

13 O. to arrange for guarantees or other security,
14 liquidity or credit enhancements in connection with its bonds,
15 notes or other obligations by the federal government or by any
16 private insurer or other provider and to pay any premiums
17 therefor;

18 P. subject to any agreement with bondholders or
19 noteholders, to invest money of the authority not required for
20 immediate use, including proceeds from the sale of any bonds or
21 notes:

22 (1) in obligations of any municipality or the
23 state or the United States of America;

24 (2) in obligations the principal and interest
25 of which are guaranteed by the state or the United States of

1 America;

2 (3) in obligations of any corporation wholly
3 owned by the United States of America;

4 (4) in obligations of any corporation
5 sponsored by the United States of America that are or may
6 become eligible as collateral for advances to member banks as
7 determined by the board of governors of the federal reserve
8 system;

9 (5) in certificates of deposit or time
10 deposits in banks qualified to do business in New Mexico,
11 secured in the manner, if any, as the authority shall
12 determine;

13 (6) in contracts for the purchase and sale of
14 obligations of the types specified in this subsection; or

15 (7) as otherwise provided in any trust
16 indenture or a resolution authorizing the issuance of the bonds
17 or notes;

18 Q. subject to any agreement with bondholders or
19 noteholders, to purchase bonds or notes of the authority at the
20 price as may be determined by the authority or to authorize
21 third persons to purchase bonds or notes of the authority;
22 bonds or notes so purchased shall be canceled or resold, as
23 determined by the authority;

24 R. to make surveys and to monitor on a continuing
25 basis the adequacy of the supply of:

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1 (1) funds available in the private banking
2 system in the state for affordable residential mortgages; and

3 (2) adequate, safe and sanitary housing
4 available to persons of low or moderate income in the state and
5 various sections of the state;

6 S. to make and execute agreements, contracts and
7 other instruments necessary or convenient in the exercise of
8 the powers and functions of the authority under the Mortgage
9 Finance Authority Act;

10 T. to employ architects, engineers, attorneys
11 (other than and in addition to the attorney general of the
12 state), accountants, housing, construction and financial
13 experts and such other advisors, consultants and agents as may
14 be necessary in its judgment and to fix and pay their
15 compensation;

16 U. to contract for and to accept any gifts or
17 grants or loans of funds or property or financial or other aid
18 in any form from the federal government or from any other
19 source and to comply, subject to the provisions of the Mortgage
20 Finance Authority Act, with the terms and conditions thereof;

21 V. to maintain an office at such place in the state
22 as it may determine;

23 W. subject to any agreement with bondholders and
24 noteholders, to make, alter or repeal, subject to prior
25 approval by the Mortgage Finance Authority Act oversight

1 committee, hereby created, to be composed of four members
 2 appointed by the president pro tempore of the senate and four
 3 members appointed by the speaker of the house of
 4 representatives, such rules and regulations with respect to its
 5 operations, properties and facilities as are necessary to carry
 6 out its functions and duties in the administration of the
 7 Mortgage Finance Authority Act;

8 X. to make, purchase, guarantee, service and
 9 administer mortgage loans for residential housing for the
 10 purposes set forth in the Mortgage Finance Authority Act where
 11 private banking channels and private enterprise, unaided, have
 12 not, cannot or are unwilling to make, purchase, guarantee,
 13 service or administer the loans; [~~and~~]

14 Y. to act as trustee and administer the land title
 15 trust fund created pursuant to Section 58-28-3 NMSA 1978;

16 Z. to act as trustee and administrator pursuant to
 17 the Low-Income Housing Trust Act; and

18 [~~Y.-~~] AA. to do any and all things necessary or
 19 convenient to carry out its purposes and exercise the powers
 20 given and granted in the Mortgage Finance Authority Act. "

21 Section 2. Section 58-18B-3 NMSA 1978 (being Laws 1994,
 22 Chapter 146, Section 3, as amended) is amended to read:

23 "58-18B-3. DEFINITIONS.--As used in the Low-Income
 24 Housing Trust Act:

25 A. "appropriate financial institution service

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1 charges and fees" means those service charges and fees that a
2 financial institution charges its customers on demand deposit
3 accounts;

4 B. "division" means the financial institutions
5 division of the regulation and licensing department;

6 C. "escrow closing agent" means an escrow agent
7 other than a title company that acts in the normal course of
8 business as the agent of the seller and buyer of real estate
9 for the purpose of consummating a sale, including the
10 performance of the following functions:

11 (1) preparation of deeds, mortgages,
12 promissory notes, deeds of trust, real estate contracts,
13 assignments or other documents incidental to the sale as
14 permitted by law;

15 (2) calculations and disbursements of prorated
16 taxes, insurance premiums, utility bills and other charges
17 incidental to the sale;

18 (3) preparation of sellers' and buyers'
19 closing statements;

20 (4) supervision of signing of documents;

21 (5) collection and disbursement of down
22 payments, realtors' commissions, fees and other charges
23 pursuant to a sales agreement; and

24 (6) recordation of documents;

25 D. "escrow servicing agent" means ~~any~~ a person

1 who in the normal course of business collects and disburses
 2 funds received from real estate-related financing instruments
 3 on behalf of a lender or borrower;

4 E. "first-time home buyer" means:

5 (1) an individual or the individual's spouse
 6 who has not owned a home other than a manufactured home during
 7 the three-year period prior to the purchase of a home; or

8 (2) ~~any~~ an individual who is a displaced
 9 homemaker or a single parent;

10 F. "fund" means the land title trust fund created
 11 pursuant to the provisions of the Land Title Trust Fund Act;

12 G. "low-income persons" means a household
 13 consisting of a single individual or a family or unrelated
 14 individuals living together when the household's total annual
 15 income does not exceed eighty percent of the median income for
 16 the area, as determined by the United States department of
 17 housing and urban development and as adjusted for family size,
 18 or other income ceiling determined for the area on the basis of
 19 that department's findings that such variations are necessary
 20 because of prevailing levels of construction costs or fair
 21 market rents or unusually high or low family incomes;

22 H. "person" means an individual or any other legal
 23 entity; ~~and~~

24 I. "property manager" means a person who acts in
 25 the normal course of business as the agent for the owner of

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1 real property for the purpose of property rental, leasing and
2 management; and

3 J. "trustee" means the New Mexico mortgage finance
4 authority."

5 Section 3. Section 58-18B-5 NMSA 1978 (being Laws 1994,
6 Chapter 146, Section 10, as amended) is amended to read:

7 "58-18B-5. TRUST ACCOUNTS--ESCROW ACCOUNTS--SPECIAL
8 ACCOUNTS--POOLED INTEREST-BEARING ACCOUNTS--DISPOSITION OF
9 EARNED INTEREST ON CERTAIN ACCOUNTS.--

10 A. Every real estate broker who maintains a trust
11 or escrow account as required pursuant to the provisions of
12 Paragraph (8) of Subsection [H] A of Section 61-29-12 NMSA 1978
13 may maintain a pooled interest-bearing escrow account and may
14 deposit all customer funds into that account except for:

15 (1) funds required to be deposited into a
16 property management trust account under an express property
17 management agreement; or

18 (2) funds required to be deposited into an
19 interest-bearing account under an express agreement between the
20 parties to a transaction and under which agreement provisions
21 are made for the payment of interest to be earned on the funds
22 deposited.

23 B. Every escrow closing agent that maintains a
24 trust account or escrow account pursuant to the provisions of
25 Section 58-22-20 NMSA 1978 shall maintain a pooled interest-

1 bearing escrow account and shall deposit all customer funds
 2 into that account, except for funds required to be deposited
 3 into an interest-bearing account under an express agreement
 4 between the parties to a transaction and under which agreement
 5 provisions are made for the payment of interest to be earned on
 6 the funds deposited.

7 C. The interest earned on customer funds deposited
 8 in a pooled interest-bearing escrow account pursuant to the
 9 provisions of Subsection A or B of this section, net of any
 10 appropriate financial institution service charges and fees,
 11 shall be remitted monthly or quarterly from the financial
 12 institution in which the account is maintained to the fund.
 13 The account agreement between the depositor and the financial
 14 institution shall expressly provide for the required remittance
 15 of interest.

16 D. The provisions of this section do not relieve a
 17 real estate broker or escrow closing agent from any obligations
 18 under other laws to safeguard and account for funds in a pooled
 19 interest-bearing account.

20 E. The pooled interest-bearing escrow accounts
 21 authorized to be established pursuant to the provisions of this
 22 section shall be interest-bearing demand accounts from which
 23 withdrawals and transfers can be made without delay, subject
 24 only to any notice period the depository institution is
 25 required to observe by law or ~~[regulation]~~ rule.

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1 F. The [~~director of the division~~] trustee shall
2 adopt rules to carry out the provisions of the Low-Income
3 Housing Trust Act.

4 G. A person establishing and maintaining a pooled
5 interest-bearing escrow account required by the provisions of
6 Subsection A or B of this section is not required to make
7 disclosure to a person whose funds are placed in the account of
8 the disposition of interest earned on the account.

9 H. An escrow servicing agent shall not be required
10 to establish and maintain a pooled interest-bearing escrow
11 account pursuant to the provisions of Subsection A or B of this
12 section.

13 I. A property manager shall not be required to
14 establish and maintain a pooled interest-bearing escrow account
15 pursuant to the provisions of Subsection A or B of this
16 section.

17 J. Real estate brokers and escrow closing agents
18 shall enroll and instruct participating financial institutions
19 on how to establish a pooled interest-bearing escrow account
20 and how to authorize remittance of accrued interest less
21 service charges to the fund.

22 K. A real estate broker or an escrow closing agent
23 shall not be required to establish and maintain a pooled
24 interest-bearing escrow account pursuant to the provisions of
25 Subsection A or B of this section if no financial institution

1 in the community where the broker or agent maintains his
 2 principal place of business provides or offers that type of
 3 account. "

4 Section 4. Section 58-28-4 NMSA 1978 (being Laws 1997,
 5 Chapter 118, Section 4, as amended) is amended to read:

6 "58-28-4. TRUST ACCOUNTS-- ESCROW ACCOUNTS-- POOLED
 7 INTEREST-BEARING TRANSACTION ACCOUNTS-- DISPOSITION OF EARNED
 8 INTEREST ON CERTAIN ACCOUNTS. --

9 A. A title company that maintains one or more trust
 10 accounts or escrow accounts into which customer funds are
 11 deposited for use in the purchase, sale or financing of real
 12 property located in New Mexico may maintain one or more pooled
 13 interest-bearing transaction accounts and may deposit customer
 14 funds into those accounts, except for funds required to be
 15 deposited into interest-bearing accounts or investments under
 16 instructions from one or more of the parties to a transaction
 17 that provide for the payment of interest to be earned on the
 18 deposited funds to a person other than the title company. A
 19 pooled interest-bearing transaction account established
 20 pursuant to the provisions of this section shall be maintained
 21 in the name of the title company, but the trustee shall be
 22 named and shown as the beneficial owner of the account income
 23 or interest. A title company maintaining one or more pooled
 24 interest-bearing transaction accounts shall not be paid or
 25 receive any interest earned on funds deposited in the accounts

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1 except for the purpose of remitting net earned interest to the
2 trustee pursuant to the provisions of this section.

3 B. The interest earned on customer funds deposited
4 in a pooled interest-bearing transaction account pursuant to
5 the requirements of Subsection A of this section, net of any
6 service charges and fees that a depository institution charges
7 to regular, non-title company depositors and net of any
8 reasonable charge for preparation and transmittal of any
9 required report pursuant to the provisions of Subsection F of
10 this section, shall be remitted monthly or quarterly either
11 directly to the fund or to the title company for its remittance
12 to the fund. Alternatively, the depository institution may
13 credit the title company account with the net interest earned
14 either monthly or quarterly. Interest accrued after deducting
15 the allowable charges and fees shall be treated as interest
16 earned by the trustee and reported as such by the depository
17 institution.

18 C. The provisions of this section shall not change
19 existing duties or obligations of a title company under other
20 laws to safeguard and account for funds held for customers.

21 D. Funds in each pooled interest-bearing
22 transaction account shall be subject to withdrawal upon request
23 and without delay, subject only to the notice period the
24 depository institution is required to observe by law or
25 [~~regulation~~] rule.

1 E. The rate of interest payable on a pooled
2 interest-bearing transaction account shall not be less than the
3 rate customarily paid by the depository institution to regular,
4 non-title company depositors for similar accounts. Interest
5 shall be computed in accordance with the depository
6 institution's standard accounting practice. Higher rates
7 offered by the depository institution to customers whose
8 deposits exceed certain time or quantity minima, such as those
9 offered in the form of certificates of deposit, may be obtained
10 by the title company on some or all of the deposited funds so
11 long as there is no impairment of the right to withdraw or
12 transfer principal, subject only to the notice period the
13 depository institution is required to observe by law or
14 [~~regulation~~] rule.

15 F. A depository institution or title company making
16 a remittance of interest to the fund shall at the time of the
17 remittance transmit a report to the trustee for each account
18 from which remittance is made showing:

19 (1) the name of the title company maintaining
20 the account from which remittance is made;

21 (2) the rate of interest used to compute the
22 earned interest and the amount of earned interest;

23 (3) the amount, if any, of depository
24 institution service charges and fees deducted and any charge
25 for the preparation and transmittal of the report; and

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1 (4) the account balance as of the ending date
2 of the reporting period.

3 G. If the depository institution remits to the
4 title company or credits the title company account, it shall
5 make the remittance or credit no later than ten days after the
6 statement cutoff for that account. The title company shall
7 remit to the fund and shall send the report with the remittance
8 no later than thirty days after receipt of the remittance or
9 credit by the depository institution.

10 H. Remittances to the fund shall be made at least
11 quarterly, no later than ten days after the statement cutoff
12 for that account if made by the depository institution and no
13 later than thirty days after receipt of remittance or credit
14 from the depository institution if made by the title company.

15 I. The ~~[division]~~ trustee shall adopt and
16 promulgate rules ~~[and regulations]~~ regarding the obligations of
17 depository institutions pursuant to the provisions of the Land
18 Title Trust Fund Act and the Low-Income Housing Trust Act. "

19 Section 5. Section 58-28-5 NMSA 1978 (being Laws 1997,
20 Chapter 118, Section 5) is amended to read:

21 "58-28-5. USE OF MONEY--ELIGIBLE ACTIVITIES. --

22 A. Money from the fund and other sources may be
23 used to finance in whole or in part any loans or grant projects
24 that will provide housing for low-income persons and for other
25 uses specified in this section. Money deposited into the fund

1 may be used annually as follows:

2 [A-] (1) no more than ~~seven~~ five percent of
3 the fund shall be used for expenses of administering the fund;

4 [B-] (2) no less than twenty percent of the
5 fund shall be invested in a permanent capital fund, the
6 interest on which may be used for purposes specified in this
7 section;

8 [C-] (3) no less than fifty percent of the
9 fund shall be allocated to eligible organizations to make
10 housing more accessible to low-income persons; ~~and~~

11 (4) no more than ten percent of the fund may
12 be allotted for use to provide scholarships for New Mexico high
13 school graduates and general equivalency diploma recipients at
14 New Mexico public post-secondary educational institutions under
15 a program approved by the trustee under the administration of a
16 nonprofit statewide land title association; and

17 [D-] (5) the remaining balance may be
18 allocated to eligible organizations for other housing-related
19 programs for the benefit of the public as specifically approved
20 by the trustee from time to time.

21 B. Money in the capital fund authorized in
22 Paragraph (2) of Subsection A of this section may be invested
23 in fully amortizing interest-bearing mortgages secured by real
24 property in New Mexico, the interest on which may be used for
25 purposes specified in this section."

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